IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 982 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANU NANJI CHAUHAN (GRAND SON OF B.G,CHAUHAN & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioner(s) : 1, 1.2.1,1.2.2
RULE SERVED for Respondent(s) : 1, 3,
MR DA DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/02/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the heirs of a retired employee have prayed for an appropriate writ, direction and/or order directing the respondents to pay all pensionary benefits available to them and/or their deceased grand-father. It is required to be noted that initially the Special Civil Application was filed by the retired employee himself i.e. Bhimji Gagji Chauhan. However, during the pendency of the present Special Civil Application, he has expired and the legal heirs were subsequently brought on record. Shri PJ Kanabar, learned advocate appearing on behalf of the petitioners has submitted that without entering into further larger question with regard to the pensionary benefit even now the petitioners are entitled to the benefit of family pension on completion of five years of the deceased employee. It is required to be noted that earlier the pensionary benefits to the deceased employee were not paid on the ground that required ten years' service were not completed. Shri Kanabar, learned advocate appearing on behalf of the petitioners while relying upon the judgment of the Division Bench of this Court in the case of Nanubhai Bhikhubhai Varnangar V. State of Gujarat and others reported in 2006(3) GLR 2607 has submitted that even the heirs are entitled to the family pension and for the purpose of getting the benefit of family pension, the required criteria was completion of five years.

2. Shri DA Desai, learned AGP has submitted that so far as the question with regard to the family pension is concerned, the State Government has not considered the same, as the State Government had no

occasion to consider the same as the present Special Civil Application was only for the purpose of pensionary benefit and even the main Special Civil Application was filed by the retired employee. It is further submitted by him that let the petitioners submit an appropriate application for family pension to the concerned authority, the same shall be considered by the concerned authority in light of the decision of the Division Bench of this Court referred to hereinabove within stipulated time.

3. Considering the fact that the present Special Civil Application was only for pensionary benefit and during the pendency of the Special Civil Application, the retired employee has expired and now the heirs are on record and it is the contention on behalf of the heirs that they are entitled to the family pension and their case is squarely covered by the decision of the Division Bench of this Court referred to hereinabove and considering the fact that the State Government had earlier no occasion to consider the question and/or entitlement of the family pension to the petitioners, the petitioners may submit appropriate application along with copy of the judgment relied upon by the petitioners within a period of two weeks from today to the concerned authority and on receipt of the same, the concerned authority, more particularly the respondents and/or any of them are directed to take appropriate decision on the said application with regard to family pension considering the decision in the case of Nanubhai Bhikhubhai Varnangar(supra) referred to hereinabove within a period of six weeks from the date of receipt of such representation and if ultimately it is found that the petitioners are entitled to the family pension, in that case, pay the arrears within a period of six weeks thereafter. If any

decision is adverse to the petitioners, in that case, it will be open for the petitioners to revive the present Special Civil Application.

4. With this, the present Special Civil Application is disposed of. DS permitted. No costs.

(M.R. SHAH, J.)

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